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(Cite as: 2004 WL 1534784 (D.Del.))

## Motions, Pleadings and Filings

Only the Westlaw citation is currently available.

United States District Court,  
D. Delaware.  
Devon Anthony BROWN, Petitioner,  
v.  
Raphael WILLIAMS, Warden, Respondent.  
**No. Civ.A. 02-1443-KAJ.**

June 4, 2004.

Devon Anthony Brown. Petitioner, pro se.

Loren Meyers, Chief of Appeals Division, Delaware  
Department of Justice, Wilmington, Delaware, for  
Respondent.

## MEMORANDUM OPINION

JORDAN, J.

### I. INTRODUCTION

\*1 Petitioner Devon Anthony Brown was in pre-trial custody at the Howard R. Young Correctional Center in Wilmington, Delaware. Currently before the Court is Brown's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (D.I.2.) For the reasons that follow, I will dismiss the petition as moot.

### II. FACTUAL AND PROCEDURAL BACKGROUND

On March 9, 2002, Brown was arrested and charged in the Delaware Family Court with one count of harassment in violation of 11 DEL.CODE ANN. § 1311. He was incarcerated pending sentencing in the Superior Court because he had pled guilty in December 2001 to resisting arrest and possession of controlled substances within 1000 feet of a school. On June 28,

2002, the Superior Court sentenced Brown to time served on the possession charge. For resisting arrest, the Superior Court sentenced him to 6 months imprisonment, suspended for 6 months.

According to Brown, he was released from prison on July 2, 2002. A case review was scheduled for July 16 in the Family Court, but Brown contends he did not hear about the review until July 18, 2002. Because he did not appear, a capias for his arrest was issued. Brown surrendered and he was committed in default of \$5000 bail.

A Family Court Commissioner denied Brown's request to reduce his bail, and also denied his request to proceed *pro se*. On August 27, 2002, a Family Court Commissioner dismissed the case without prejudice.

Meanwhile, in papers dated August 14, 2002, Brown filed in this Court a pro se petition for the writ of habeas corpus pursuant to 28 U.S.C. § 2254. (D.I.2). Reading his petition in conjunction with a letter filed in this Court, Brown appears to assert three claims: (1) the § 5,000 bail bond was excessive; (2) he was denied a speedy trial; and (3) he was denied his constitutional right to self-representation. (D.I. 2; D.I. 4.)

The State asks the Court to dismiss Brown's § 2254 petition as moot due to the Family Court's dismissal of Brown's case.

### II. DISCUSSION

Pursuant to § 2254, a federal court can only "entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court." 28 U.S.C. § 2254(a). Here, when Brown filed his habeas petition, he was not in custody pursuant to a State court judgment. Rather, he was in custody awaiting trial in the Family Court. Thus, § 2254 does not authorize this Court to review Brown's habeas petition.

Nevertheless, a pre-trial detainee can challenge his

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custody pursuant to 28 U.S.C. § 2241 "before a judgment is rendered in a state criminal proceeding." *See Moore v. DeYoung*, 515 F.2d 437, 442 (3d Cir.1975). Thus, rather than dismiss Brown's petition for failure to assert the correct statutory authority, I will analyze Brown's claims as if he had proceeded under § 2241 rather than § 2254.

The State contends that Brown's petition is moot because the state court dismissed his case. As a threshold matter, if the petition is moot, the court lacks jurisdiction over Brown's petition. *Chong v. District Director, INS*, 264 F.3d 378, 383-84 (3d Cir.2001). The basic question is whether "the standing [Brown] apparently had when he filed [his] habeas petition continues to exist now." *Id.* (citing *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)).

\*2 A litigant has standing to pursue a case or controversy in federal court only if "throughout the litigation, [he] ... 'suffer[s] ... [or is] threatened with, an actual injury traceable to the [respondent] and likely to be redressed by a favorable judicial decision.'" *Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (quoting *Lewis v. Continental Bank Corp.* 494 U.S. 472, 477(1990)); *Chong*, 264 F.3d at 384. When a habeas petitioner challenges his conviction and/or sentence, and he is released during the pendency of his habeas petition, federal courts presume that "a wrongful criminal conviction has continuing collateral consequences" sufficient to satisfy the injury requirement. *Spencer*, 523 U.S. at 8; *see Steele v. Blackman*, 236 F.3d 130, 134 n. 4 (3d Cir.2001). However, when a petitioner does not attack his conviction, the injury requirement is not presumed; rather, the petitioner must demonstrate continuing collateral consequences sufficient to satisfy the injury requirement. *Chong*, 264 F.3d at 384.

Here, Brown does not challenge the legality of any conviction. Rather, he challenges his pre-trial custody. Once the state court dismissed Brown's case, the basis for Brown's habeas petition ceased to exist. Brown has not alleged, and I cannot discern, any continuing collateral consequences from his pre-trial custody. *See, e.g., Murphy v. Hunt*, 455 U.S. 478, (1982) (claim regarding denial of pre-trial bail becomes moot upon conviction in state court). Moreover, I cannot discern

any injury that can possibly be redressed through this habeas petition. *See Harris v. Williams*, 2002 WL 1315453, at \*2 (D. Del. June 14, 2002). Therefore, Brown does not have standing to maintain this action, the petition is moot, and the court lacks jurisdiction. The petition must therefore be dismissed.

### III. CERTIFICATE OF APPEALABILITY

Finally, I must decide whether to issue a certificate of appealability. *See Third Circuit Local Appellate Rule 22.2*. A certificate of appealability may only be issued when a petitioner makes a "substantial showing of the denial of a constitutional right" by demonstrating "that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

When a federal court denies a habeas petition on procedural grounds without reaching the underlying constitutional claims, the court is not required to issue a certificate of appealability unless the petitioner demonstrates that jurists of reason would find it debatable: (1) whether the petition states a valid claim of the denial of a constitutional right; and (2) whether the court was correct in its procedural ruling. *Id.* "Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further." *Id.*

\*3 I have concluded that Brown's habeas petition is moot and must be dismissed. Reasonable jurists would not find this conclusion to be unreasonable. Consequently, I decline to issue a certificate of appealability.

### IV. CONCLUSION

For the reasons stated, Brown's application for habeas relief pursuant to 28 U.S.C. § 2254 and 28 U.S.C. § 2241 is denied. An appropriate Order shall issue.

### ORDER

At Wilmington, this 4<sup>th</sup> day of June, 2004, consistent

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with the memorandum opinion issued this same day;

IT IS HEREBY ORDERED that:

1. Petitioner Devon Anthony Brown's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is DISMISSED, and the relief requested therein is DENIED. (D.I.2.)

2. The court declines to issue a certificate of appealability for failure to satisfy the standard set forth in 28 U.S.C. § 2253(c)(2).

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